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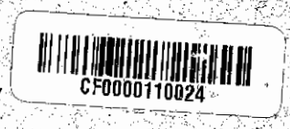

(2)

Single Bench

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR.

Misc. Petition No. 4400 of 1989.

PETITIONER:- Budharam Agarwal, aged 25 years, son of Shri K. L. Agarwal, Assistant Engineer, Municipal Corporation, Rajnandgaon, resident of Corporation Quarters, Rajnandgaon, (M.P.).

VERSUS

RESPONDENTS:- 1. The Administrator, Municipal Corporation, Rajnandgaon.

2. State of Madhya Pradesh through the Secretary, Local-Self-Government, Bhopal.

3. Madhya Pradesh Public Service Commission, Indore, (M.P.).

PETITION UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA.

AFR (61)

21.12.05

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

Single Bench: Hon'ble Shri Satish K. Agnihotri, J.

WRIT PETITION NO. 4400 OF 1989

Budhram Agrawal

Versus

The Administrator, Municipal Corporation and others.

Present: Shri B.P. Sharma, counsel for the petitioner.
Shri Sanjay K. Agrawal, counsel for the respondent No. 1.
Shri Pankaj Shrivastava, Panel Lawyer for the respondents No. 2/State.

ORAL ORDER

(21st December, 2005)

Heard

1. Pursuant to the advertisement dated 31.12.1987 (Annexure P-1) the petitioner made an application for appointment on the post of Assistant Engineer (Civil) in Municipal Corporation, Rajnandgaon. The required qualification for Assistant Engineer (Civil) was B.E. (Civil) with 50% marks and 5 years experience stated in the advertisement.

2. Vide order dated 3.5.1988 (Annexure P-2), the petitioner was appointed as Assistant Engineer (Civil) against clear vacancy, on the pay scale of Rs 1000-30-1210-40-1450-50-1800-60-1920 for a period of six months with the condition that his service could be terminated any time without show cause notice. Vide order dated 6.12.1988 (Annexure P-3) service of the petitioner was extended for

further period of six months with a break of one day in anticipation of approval of the State Public Service Commission. Further by order dated 27.12.1988 address to the Commissioner, Municipal Corporation, Rajnandgaon, the Public Service Commission declined to grant approval to the appointment of the petitioner on the ground that the petitioner did not possess the prescribed experience as required for the post of Assistant Engineer (Civil).

3. The State Government/respondent No. 2, by letter dated 30.8.1989 (Annexure P-7) informed to the respondent No. 1 that in view of the refusal of approval of his appointment by the State Public Service Commission, service of the petitioner be terminated with immediate effect.

4. Being aggrieved by the letter dated 27.12.1988 (Annexure P-4) and the letter dated 30.8.1989 (Annexure P-7), the petitioner filed this petition under Article 226 of the Constitution of India praying that the impugned orders dated 27.12.1988 and letter dated 30.8.1989 be quashed and the respondents be directed to accept the appointment of the petitioner in the Municipal Corporation, Rajnandgaon on the post of Assistant Engineer (Civil).

5. This court, after hearing learned counsel for the petitioner, while issuing notice passed an interim order on 25.9.1989 to the effect that service of the petitioner shall not be terminated until further orders. After hearing learned counsel for both the parties, after notice, the High Court of Madhya Pradesh at Jabalpur, where the petition was filed originally admitted, the petition for hearing and the interim order passed on 25.9.1989 was made absolute on 8.7.91.

6. Pursuant to the orders dated 25.9.1989 and 8.7.91 passed by the High Court, the petitioner continued as Assistant Engineer (Civil) with the respondent No. 1/Corporation. Presently, he has been sent on deputation to the Municipal Corporation, Raipur.

7. Learned counsel appearing for the petitioner contented that the petitioner was well qualified having obtained B.E. degree (Civil) at the time of appointment by the respondent No. 1/Corporation. Though, the petitioner did not have experience at the time of initial appointment, but with the passage of time and pursuant to the order passed by this court, the petitioner has obtained sufficient experience on account of this, the petitioner should not be thrown out after having served the Corporation for more than 16 years. Learned counsel relies on decision of the Supreme Court in **Miss Shainda Hasan Vs. State of Uttar Pradesh and others** (AIR 1990 Supreme Court 1381).

8. Shri Sanjay K. Agrawal, learned counsel appearing for the respondent No. 1/Corporation and Shri Pankaj Shrivastava, learned counsel appearing for the respondent No. 2 submit that the issue involved in the present petition is not the experience which had been obtained by the petitioner today. When the petitioner was appointed, he did not have the requisite experience and as such the State Public Service Commission as well as State Government had rightly declined to grant approval for appointment of the petitioner on the post of Assistant Engineer (Civil). Be that as it may, the petitioner had academic qualification on that day, when the Corporation appointed the petitioner on the post of Assistant Engineer (Civil). The petitioner did not possess the experience,

which he has obtained during pendency of this petition. The petitioner was allowed to continue by orders passed by this court. The Supreme Court in **Miss Shainda Hasan's case (Supra)**, wherein identical facts were involved, has held as under :-

> "It is admitted by the parties that as a result of the Court orders the appellant Ms. Shainda Hasan is continuing to work as Principal in the Karamat Husain Muslim Girls College, Lucknow since 1974. Having served the institution for over 16 years it would be unjust to make her leave the post. Under the circumstances let the University reconsider the whole matter sympathetically".

9. It is admitted position that now by resolution dated 6.10.1988, the Corporation has relaxed condition of having 5 years experience for appointment on the post of Assistant Engineer (Civil).

10. For the reasons stated above, the petition is allowed with a direction that the respondents No. 1 and 2 shall consider the case of the petitioner for grant of approval to the appointment made on 3.5.1988 on the post of Assistant Engineer (Civil). No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Bablu